IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8717 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KALUBHAI SENDHABHAI RABARI

Versus

DISTRICT MAGISTRATE,

Appearance:

1. Special Civil Application No. 8717 of 2004

HL PATEL ADVOCATES for Petitioner No. 1

MRS HB PUNANI, AGP for Respondent No. 1-2,4

MS PJ DAVAWALA for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 23/09/2004

ORAL JUDGEMENT

By way of this Special Civil Application under

Article 226 of the Constitution of India, the petitioner has challenged the order of detention dated 21-5-2004 passed by the District Magistrate, Surendranagar, in exercise of powers under Section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980.

2. Heard learned counsel appearing for the respective parties. Also perused the material on record. According to learned advocate for the petitioner, at the time of serving the detention order, certain documents relied upon by the authority were not supplied and hence, a representation was made on 9-6-2004 through brother of the detenu demanding the said documents. However, same were not supplied and it has not been dealt with in the affidavit filed by Deputy Secretary. In this connection, he has relied upon the case reported in AIR 1980 S.C. 1983 of Smt.Icchu Devi Choraria Vs. Union of India and Ors. He has also relied upon a judgment reported in AIR 1982 S.C. 696 in the case of Mohd. Zakir Vs. Delhi Administration and Ors. at head note as under:

> "Detention-Documents relied on by authorities not supplied with grounds of detention-Detention is illegal."

It has been further held by the Apex Court as under:

> "It is manifest that the question of demanding the documents is wholly irrelevant because it is the constitutional mandate which requires the detaining authority to give the documents relied on or referred to in the order of detention pari passu the grounds of detention in order that the detenu may make an effective representation immediately instead of waiting for the documents to be supplied with."

3. It is the duty of the authority to supply copy of the statements and documents with the detention order. Here in this case, copies of the documents though relied upon by the authority in passing the impugned order of detention have not been supplied to the detenu. Therefore, there is infraction of safeguards provided under the provisions of Art.22(5) of the Constitution of India and the petitioner has been deprived of knowing the grounds and making effective representation against the order of detention. Since the petitioner succeeds only on this point learned advocate for the petitioner does not press any other points.

4. The petition is allowed. The impugned order of detention dated 21-5-2004 passed against the detenu Kalubhai Sendhabhai Rabari is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(R.P.DHOLAKIA,J.)

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